

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



Th13a

Filed:	July 14, 2005
49 th Day:	waived
Staff:	Ruby Pap
Staff Report:	September 1, 2005
Hearing Date:	September 15, 2005

REVISED STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

APPEAL NO.:	A-1-MEN-05-032
APPLICANTS:	MacCallum House, L.L.C.
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	In the Town of Mendocino, on the north side of Albion Street and the south side of Ukiah Street at 45020 Albion Street, Mendocino County (APNs 119-236-10, 119-236-12).
PROJECT DESCRIPTION:	Conversion of existing storage shed into a catering kitchen and use of the lawn to place a 40' x 60' tent on weekends when weddings are held.
APPELLANT:	Mary Cesario Weaver
SUBSTANTIVE FILE DOCUMENTS:	1) Mendocino County CDP No. 02-04; and 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after continued public hearing, determine that a **SUBSTANTIAL ISSUE** exists with respect to the grounds on which the appeal has been filed

and that the Commission hold a de novo hearing, because the appellant has raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP).

The development, as approved by the County, consists of the conversion of an existing storage shed into a catering kitchen and use of the lawn to place a 40' x 60' tent on weekends when weddings are held.

The project site is located in the Town of Mendocino, on the north side of Albion Street and the south side of Ukiah Street, at 45020 Albion Street in Mendocino County.

The Appellant poses seven separate contentions that the project is inconsistent with the certified Local Coastal Program (LCP), including visual resource policies, policies for temporary events, cumulative effect policies, maximum lot coverage policies, public service policies, and inconsistency with LCP policies regarding accessory uses and buildings.

Staff recommends that the Commission find that appellant's contentions are valid grounds for an appeal and raise a substantial issue of conformity of the approved development with the certified LCP. Specifically, staff recommends that the Commission finds that the appellant's contention that the exemption from coastal development permitting requirements for the use of the lawn to place tents and hold outdoor wedding gatherings raises a substantial issue of conformity with the temporary events provisions of the Mendocino Town Zoning Code.

Since the public hearing was opened on August 12, 2005, the applicant has provided additional information about previous wedding and other events held on the MacCallum House grounds over the last two years and about scheduled events for 2005. Such events were held 6 times in 2003, 15 times in 2004, and it is anticipated they will be held 18 times in 2005. Staff notes that the previous pattern of wedding and other events and the proposed schedule of future events do not reflect a random series of unanticipated temporary events. Instead, the weddings occur on a regular basis and provide a significant amount of business to the MacCallum House Inn that is both anticipated and planned for.

Because these outdoor events are (1) set up to be permanently served by the auxiliary kitchen, (2) are primarily for private weddings and serve an on-going commercial enterprise, and (3) exceed the definition of "limited duration" because the outdoor weddings have exceeded a consecutive four-month period on an intermittent basis, the local government did not have a high degree of factual or legal support for its decision to exempt the outdoor events at MacCallum House as temporary events. Further, exempting from coastal development permitting requirements the outdoor wedding events at MacCallum House would set a precedent for the Town of Mendocino as the issue of whether activities conform to the temporary use provisions of the Mendocino Town Zoning Code has not previously been considered on appeal by the Commission. Many such events could adversely affect coastal resources, such as public access or visual resources.

The motion to adopt the staff recommendation of Substantial Issue is found on page no. 7.

STAFF NOTES:

1. Revised Staff Report

The public hearing for this project was opened at the August 12, 2005 Commission meeting. The Commission continued the hearing on Substantial Issue, and the applicants signed an unconditional 49-day waiver to facilitate this continuance. Since the August 12th hearing, Commission staff met with the applicants at the site on August 16th, and learned additional information about the project. Staff has also done further analysis of the project's consistency with the Mendocino LCP, including sections of the Mendocino Town Code dealing with accessory uses and the temporary events provisions. As a result, sections of the staff report have been augmented. This revised staff report includes changes to the recommendation on the use of the accessory structure as a kitchen, and finds that this accessory use raises no substantial issue of conformance with the Mendocino Town Code's accessory use provisions. The accessory use provisions of the Mendocino Town Code state that accessory structures and uses must be accessory to the "principal use" of the property, not the "principally permitted use," as previously stated in the July 29th staff report. The use of the accessory structure as a kitchen would be accessory to the "principal use" of an inn and restaurant on the property, regardless of the fact that the inn and restaurant are conditional, and not principally permitted uses on the property. This revised staff report also includes an expanded analysis on the appealability of the project and the consistency of the approved project with the temporary events provisions of the LCP. It also includes as a new exhibit (exhibit 7) new letters received from community members regarding the project.

2. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 of the Coastal Act states that an action taken by a local government on a coastal development permit application [emphasis added] may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Additionally, Section 30625 states that a claim of exemption for any development by a local government may be appealed to the Commission. Further, Section 30603(a)(4) makes the approval of "any development" by a coastal county appealable to the

Commission, with the only exception being development that is “designated as the principal permitted use” under the zoning in the LCP.

On June 23, 2005, the Mendocino County Coastal Permit Administrator conditionally approved the coastal development permit application for the project (CDP #2-04) (exhibit no.4). The permit approved the coastal development permit application for the conversion of an existing storage shed into a catering kitchen. The application for the coastal development permit also included a request to allow the use of a 40 by 60 outdoor tent on dates, usually weekends, when weddings are held. Since the County determined that this portion of the application was exempt from coastal development permit requirements, taking the position that these events were temporary events and temporary structures exempt under the Town code’s temporary event provisions, the County’s action on the coastal development permit application also authorized the applicant’s request to use an outdoor tent on the inn lawn for outdoor weddings. As the County’s decision to authorize the use of outdoor tents for weddings and other temporary events and approve the conversion of the shed to a kitchen constitute actions on a coastal development permit application for one or more of the kinds of appealable development noted above, the action(s) are appealable to the Commission pursuant to 30603 and 30625 of the Coastal Act.

The approved development is appealable to the Commission for two independent reasons: (1) because, pursuant to Section 30603(a)(4) of the Coastal Act, it is not specifically identified as the principal permitted use in the county’s zoning code and (2) because the approved development is located in the Town of Mendocino, a special community as designated in the certified LCP and therefore an appealable sensitive coastal resource area pursuant to Section 30603(a)(3) of the Coastal Act.

Regarding the approved development’s appealability pursuant to Section 30603(a)(4), Mendocino Town Zoning Section 20.608.035(I) provides a definition of “Principal Permitted Use” as follows:

"Principal Permitted Use(s)" means the primary use as designated in the Mendocino Town Plan and this Division for each land use classification. Use Types allowed within each principal permitted use category are specified in Chapters 20.644 through 20.684.

The Mendocino Town Plan describes the principally permitted uses for the “Commercial” land-use classification, where the subject property is designed:

Principal Permitted Uses:

Residential: Single family, two family and multifamily dwelling units, subject to density requirements.

Civic Uses: Clinic services, libraries, cultural facilities, lodge, fraternal and civic assembly, religious assembly, minor impact services and utilities.

Commercial Uses: Administrative and business offices, specialty shops, personal services, retail stores (all of which are under 1,000 square feet of floor area per parcel).

The Mendocino Town Zoning Code Section 20.664.010 lists the principally permitted uses for the “Mendocino Commercial” district, where the subject property is designated:

A) The following use types are permitted in the MC District:

(1) Residential Use Types

Family Residential: Single Family

Family Residential: Two Family

Family Residential: Multi-Family

(2) Civic Use Types

Administrative Services Government

Clinic Services

Cultural Exhibits and Library Services

Lodge, Fraternal and Civic Assembly

Minor Impact Utilities

Religious Assembly

(B) The following Use Types which do not exceed one thousand (1,000) square feet of gross floor area per parcel are permitted in the MC District.

(1) Commercial Use Types

Administrative and Business Offices

Medical Services

Personal Services

Retail Sales: Limited

(C) For the purposes of appeal to the Coastal Commission, the Principal Permitted Use for the Commercial District shall be Commercial Use Types. (Ord. No. 3915 (part), adopted 1995) [emphasis added.]

The Mendocino Town Zoning Code lists the principally permitted uses for the *Visitor Serving Facilities Combining District:

*The following use types are permitted in the * District:*

(A) Residential Use Types

Family Residential: Single Family (Ord. No. 3915 (part), adopted 1995)

The property affected by the (1) approved conversion of the storage shed to a kitchen at the MacCallum House Inn and (2) the approved use of the lawn to place a 40 x 60 tent and hold outdoor temporary wedding gatherings is designated Commercial under the LUP and zoned Mendocino Commercial *Visitor Serving Facilities Combining District (MC*) under the Town Coastal Zoning Code. The County's LUP and zoning ordinance designates commercial use types as the principally permitted use for the Mendocino Commercial Zoning District, and specifically states that for purposes of appeal to the Coastal Commission, the Principally Permitted Use for the Commercial District shall be Commercial Use Types. The certified zoning code defines commercial use types to solely include administrative and business offices, medical services, personal services and retail sales. Commercial use types do not include inns, restaurants or food sales for consumptive or non-consumptive use. In fact, dining establishments in this zone are solely allowed as a conditional use, subject to a conditional use permit. Therefore, use of the property as an inn, restaurant, dining establishment, or food sales for consumption or non-consumption is not the principal permitted use under the applicable Mendocino Town Plan or Zoning District (C, MC, and *).¹ Because the approved coastal development permit application for (1) conversion of a storage shed to a kitchen and (2) the approved use of the lawn to place a 40 x 60 tent and hold outdoor wedding gatherings involves development that is not the principal permitted use in an MC* zone, such approved development is appealable to the Coastal Commission. Therefore, the County's approval of the coastal development permit application for the conversion of a storage shed to a kitchen and the use of the lawn to place a 40 x 60 tent and hold outdoor events is appealable to the Commission pursuant to Sections 30603(a)(4) and 30625 of the Coastal Act.

The approved development is also appealable to the Commission pursuant to 30603 (a)(3) of the Coastal Act because the proposed development is within a sensitive coastal resource area. Section 20.608.038(6) of the Mendocino Town Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity," including, among

¹ Although Residential and Civic Use types are designated Principally Permitted Uses in the Mendocino Commercial zone, for purposes of appeal to the CCC, they are not considered the Principally Permitted Use in the Mendocino Commercial zone, only Commercial Uses are, as stated in Section 20.664.010(C). Further, even if they were considered the Principally Permitted Use for purposes of determining whether a project is appealable to the CCC, the outdoor wedding events at MacCallum House do not fall under the categories of Residential Use Types or Civic Use Types, as defined in the LCP (Mendocino Town Zoning Code Chapter 20.616 and 20.620). Section 20.620.055 of the Mendocino Town Code defines "Lodge, Fraternal, and Civic Assembly" as meetings and activities conducted primarily for their members by nonprofit organizations which are tax exempt pursuant to Section 501 (c) of the Internal Revenue Code. Excluded from this use type are uses classified as Group Care, or Visitor Accommodations (all types). Typical uses include meeting places for civic clubs, grange halls, lodges, or fraternal or veterans organizations. The County approved outdoor wedding events held at MacCallum house are for profit, and do not meet the above definition for Civic Assembly. While other civic events may occur at MacCallum House, wedding receptions account for the majority of events held there, and the project approved/exempted by the County states: "...use the lawn area to put up a 40' x 60' tent on weekends when weddings are held." Further, these wedding events do not qualify as the "Religious Assembly" civic use type. As defined in the Town Code, "Religious Assembly" is religious services involving public assembly such as customarily occurs in synagogues, temples and churches. The private wedding events held at MacCallum House are not for public assembly and for the most part, are private wedding receptions that are not religious in nature.

other categories, “special communities.” Policy 4.13-1 of the Mendocino Town Plan designates the town of Mendocino as a special community. Therefore, the development is located within a sensitive coastal resource area as defined in the LCP, and, as such, is also appealable to the Commission pursuant to Sections 30603(a)(3) and 30625 of the Coastal Act.

The Commission notes that pursuant to Sections 30502 and 30502.5 of the Coastal Act, sensitive coastal resource areas designated by the Commission are subject to review by the legislature. However, Sections 30502 and 30503.5 do not require such legislative review for sensitive coastal resource areas designated by local governments in LCPs. Furthermore, Section 30005 of the Coastal Act allows for local governments to adopt and enforce additional restrictions on the use of land or water not in conflict with the Coastal Act that are more restrictive than the requirements of the Coastal Act. Thus, local governments may designate sensitive coastal resource areas to add restrictions on the use of the designated area without also obtaining review of the designation by the legislature.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. The Commission opened the hearing at its meeting of August 12, 2005. During the continued hearing on September 15th, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing, copies of which will be provided to all Commissioners.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program.

2. Filing of Appeal

One appeal was filed by Mary Cesario Weaver (Exhibit No. 3). The appeal was filed with the Commission in a timely manner on July 14, 2005 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 4) on July 7, 2005. The Commission sent notice of the appeal to the applicants and the County of Mendocino in a timely manner on July 15, 2005. The Commission opened the substantial issue hearing on August 12, 2005, and the applicants attended the hearing and submitted a 30-page letter to the Commission (exhibit 6). After accepting testimony, the Commission continued the substantial issue and *de novo* hearing.

3. 49-Day Waiver

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. On August 12, 2005, the applicants submitted a signed 49-Day Waiver waiving the applicant's right to have a hearing set within 49-days from the date the appeal was filed.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-05-032 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-05-032 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received one appeal of the County of Mendocino's decision to conditionally approve the coastal development permit application from Mary Cesario Weaver. The project as

approved by the County involves the conversion of an existing storage shed into a catering kitchen and use of the lawn to place a 40' x 60' tent on weekends when weddings are held.

The approved project is located near the center of the Town of Mendocino, on the north side of Albion Street and the south side of Ukiah Street, at 45020 Albion Street in Mendocino County. The subject property is surrounded by other commercial and residential development and many historic structures.

The appeal raises seven contentions alleging inconsistency of the approved project with the County's certified LCP. The appellants' contentions are summarized below, and the full text of the contentions is included as exhibit no.3.

1. Visual Resources and Special Communities

The appellant contends that the tents and crowds associated with the outdoor events are not subordinate to the character of its setting, and block public views to a number of surrounding landmark structures, including the MacCallum house itself, and the Red Baptist Church, a Category I landmark structure built in 1984.

2. Duration for Temporary Events

The appellant contends that when interpreting the temporary events provisions of the Mendocino Town Code, the County erred in its decision to exempt the use of the lawn to put up tents and hold weddings from CDP requirements because it did not properly apply the term, "limited duration" to the proposed outdoor wedding events, which means a period of time which does not exceed a two-week period on a continual basis, or does not exceed a consecutive four-month period on an intermittent basis. The County Coastal Permit Administrator instead stated that each event at the subject property would not be the same as the one before it unless the same couple repeats their wedding vows twice within a four-month period, so it therefore would not be consecutive. The appellant disputes this interpretation of the term "limited duration". The appellant further contends that the use of the lawn to put up tents for weekend weddings would exceed the requirements of the County Zoning Code, which require that temporary events not exceed 14 days in any 12-month period. The appellant further states that the coastal permit administrator should have considered the temporary event regulations in the County code over the temporary event regulations in the Town code, because the former are the most protective of coastal resources, and there is a provision in the Town code that states that where provisions overlap, the provision that is the most protective of coastal resources shall take precedence.

3. Cumulative Effects

The appellant further contends that the frequency and crowds at the outdoor wedding events at the inn cause cumulative effects on the special community of Mendocino.

4. Maximum Lot Coverage

The appellant further contends that the outdoor tents and canopies associated with the wedding events cause the lot coverage to increase beyond the allowable 25% on the property.

5. Temporary Uses should be Subject to All Regulations

The project description in the coastal development permit application submitted to the County included the use of the lawn area to put up a 40 x 60 foot tent on weekends when weddings would be held. The appellant further contends that the temporary wedding events that were ultimately approved by the County because they were exempted from coastal development permitting requirements should have been subject to all the regulations that would be applied in the Mendocino Commercial (MC) *Visitor Serving Facilities combining district zone.

6. Public Services

The appellant further contends that the development is not provided with an adequate access road for private vehicles, fire trucks, and ambulances, and that pedestrian safety, health, and general welfare are threatened because the approved development is not served by adequate services, such as access roads and proof of adequate water supply. The appellant further contends that the approved auxiliary kitchen and the outdoor gatherings would have an enormous negative impact on transportation, circulation, parking, and pedestrian traffic, since there are no sidewalks on the narrow alley leading to the inn.

7. Accessory Uses/Structures

The appellant further contends that the approval of the kitchen as an “accessory structure” is inconsistent with the County LCP definition of accessory buildings, which states that they shall not include sleeping quarters or kitchens.

B. LOCAL GOVERNMENT ACTION

On June 23, 2005, the Mendocino County Coastal Permit Administrator conditionally approved the coastal development permit application for the project (CDP #2-04) (exhibit no.4). The coastal development permit application was for the conversion of an existing storage shed into a catering kitchen and use of the lawn to place a 40' x 60' tent on weekends when weddings are held.

There were no special conditions imposed on this permit. The County approved the kitchen as an accessory use to the existing hotel and restaurant. Although neither an inn/hotel nor a dining establishment is a principally permitted use in the Mendocino Commercial (MC) zone where MacCallum house is located, the hotel and restaurant were determined by the County to be legally non-conforming uses, as they pre-dated the Coastal Act and the town's zoning

regulations, and therefore the kitchen was determined to be accessory to this legally-non-conforming dining establishment use, and therefore approvable under a standard coastal development permit. Permanent accessory structures such as the catering kitchen are subject to approval of a coastal development permit, as per the Town code's accessory use regulations. This permit is partially "after the fact," because in November of 2004, the County determined that the kitchen had been partially installed and was in use. In 2003, the applicants obtained a building permit and a Mendocino Historic Review Board (MHRB) permit to enclose an existing 184-square-foot wood storage shed and combine it with an adjacent 153-square-foot storage building to create a 337-square-foot storage building. In 2004 they then applied for the subject coastal development permit to allow the use of the storage building to be changed to an auxiliary catering kitchen. In 2004, the applicants then obtained another building permit to extend electrical service to the building, and MHRB permits were obtained for exhaust fans and other exterior alterations to the building. Toward the end of 2004 it was determined that the kitchen was in use.

The application for the coastal development permit also included a request to allow the use of 40 by 60 outdoor tent on dates, usually weekends, when weddings are held. Since the County determined that this portion of the application was exempt from coastal development permit requirements because temporary events and temporary structures are exempt under the Town code's temporary event provisions, the County's action on the coastal development permit application also authorized the applicant's request to use an outdoor tent on the inn lawn for outdoor weddings.

The decision of the Coastal Permit Administrator to approve the development proposed in the coastal development permit application was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by the Commission staff on July 7, 2005 (exhibit no.4). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

The County's approval of the project was appealed to the Coastal Commission in a timely manner on July 14, 2005, within 10-working days after receipt by the Commission of the Notice of Final Local Action.

C. PROJECT AND SITE DESCRIPTION

The approved development is located in the coastal zone in the Town of Mendocino on the north side of Albion Street and the south side of Ukiah Street, at 45020 Albion Street in Mendocino County (APNs 119-236-10, 119-236-12). The site is currently developed with the MacCallum House Inn, a 2,600 square foot historic house, and several smaller surrounding structures, including a gazebo, cottage, carriage house, green house, loft, and water tower. The front of the inn facing Albion Street contains a large lawn and landscaped area where the tent would be placed on weekends during wedding gatherings. The kitchen as approved would be located in

back of the inn near Ukiah Street (to the north), and would contain a walk-in refrigeration unit, two 6-burner commercial ranges with a vent hood above, a dishwasher, three sinks, drainboards, counters, a stainless steel work table, and dry storage shelving.

The Town of Mendocino is recognized as a unique community on the northern California coast, and is listed on the National Register of Historic Places. The town is designated as a “Special Community” in the County’s LCP. The MacCallum House Inn is a historic building located in the core historic district of downtown Mendocino, which contains structures dating back to the late 1800s. The subject property is surrounded by other commercial and residential development and many historic structures.

D. SUBSTANTIAL ISSUE ANALYSIS.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program...

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” (California Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

1. Appellant's Contentions Are Valid Grounds for Appeal

The appellant's contentions present potentially valid grounds for appeal in that they allege the approved development's inconsistency with the policies of the certified LCP. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding visual resources and special communities, maximum lot coverage, accessory uses/structures, public services, temporary events, and cumulative effects. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the appeal raises a substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP.

Allegations Raising Substantial Issue:

a. Temporary Events

Appellant's contentions 1-6 (described in Section (II)(A)) present valid grounds for appeal, as they allege the project's inconsistency with policies of the certified LCP. Contentions 1-6 provide allegations against the use of the lawn to place tents and to hold outdoor temporary wedding gatherings. The project description in the coastal development permit application submitted to the County included the use of the lawn area to put up a 40 x 60 foot tent on weekends when weddings would be held. The County ultimately approved this portion of the coastal development permit application by determining that these temporary events were exempt from coastal development permitting requirements, as per the temporary use regulations of the Town's zoning code.

Coastal Act Section 30603(a) states in applicable part:

After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:... [Emphasis added]

Coastal Act Section 30625(a) states in applicable part:

...any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed to the commission by an applicant, any aggrieved person, or any two members of the commission...[Emphasis added]

LCP Policies

Chapter 20.708, Temporary Use Regulations, of the Mendocino Town Zoning Code states in applicable part:

Sec. 20.708.010 Identification of Permitted Temporary Uses.

The following temporary uses and associated development may be permitted as specified by these regulations:

(A) Entertainment Events or Religious Assembly. The temporary gathering of people for a circus, carnival, concert, lecture, art or antique show or religious purposes.

(B) Construction Support. Temporary building and structures supporting residential development and/or major construction.

(C) Uses in New Subdivisions. Temporary uses in new major or parcel subdivisions which support the sale of dwellings and lots within the same subdivision.

(D) Use of a Trailer Coach. Temporary use of a trailer coach for certain purposes.

(E) Family Care Unit. The temporary use of a building, structure or trailer coach to provide housing for (a) not more than two (2) adult persons who are sixty (60) years of age or older, or (b) an immediate family member or members who requires daily supervision and care, or (c) person or persons providing necessary daily supervision and care for the person or persons residing in the main residence.

(F) Film Production. The temporary use of a building, structure or property for the purposes of film production. If film production activities constitute development as defined by [Section 20.608.023\(C\)](#), a Coastal Development Permit shall be required. (Ord. No. 3915 (part), adopted 1995)

Sec. 20.708.015 Temporary Uses Subject to Controls.

Temporary uses shall be subject to all regulations as would be applied to any use located in the same zone, except as otherwise provided by these regulations. All temporary uses must comply with [Chapter 20.760](#). (Ord. No. 3915 (part), adopted 1995)

Sec. 20.708.020 Entertainment Events, Religious Assembly, Other Large Public Gatherings or Other Temporary Events.

(A) Purpose and Authority. The purpose of this section is to identify the standards the Department of Planning and Building Services, under the direction of the Director, will use in determining whether a temporary event is excluded from coastal development permit requirements.

(B) Procedure. The organizer of a temporary event is required to contact the Department of Planning and Building Services to allow the Director or his/her designee to review the project and determine if a coastal development permit is necessary, pursuant to the following regulations.

(C) Criteria for Requiring a Coastal Development Permit. Except as described below, temporary events are excluded from coastal development permit requirements.

The Director may determine that a temporary event is subject to coastal development permit review if the Director determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:

(1) The event, either individually or together with other temporary events scheduled before or after the particular event, precludes the general public from use of a public recreational area for a significant period of time;

(2) The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in Subsection (D) below;

(3) The event would restrict public use of parking areas to the extent that it would significantly impact public recreation areas or public access to coastal waters;

(4) The event has historically required a coastal development permit to address and monitor associated impacts to coastal resources.

(D) Definitions. For purposes of this section, the following definitions shall apply.

(1) "Temporary event(s)" means an activity or use that constitutes development as defined in [Section 20.608.023](#) of the Mendocino Town Zoning Code; and is an activity or function of limited duration; and involves the placement of non-permanent structures; and/or involves exclusive use of a sandy beach, parkland, filled tidelands, water, street, or parking area which is otherwise open and available for general public use;

(2) "Limited duration" means a period of time which does not exceed a two-week period on a continual basis, or does not exceed a consecutive four-month period on an intermittent basis;

(3) "Non-permanent structures" include, but are not limited to, bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailers, portable toilets, sound/video equipment, stages, platforms, etc., which do not involve grading or landform alteration for installation;

(4) "Exclusive use" means a use that precludes use in the area of the event for public recreation, beach access, or access to coastal waters other than for or through the event itself;

(5) "Coastal resources" include, but are not limited to, public access opportunities, visitor and recreational facilities, water-oriented activities, marine resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources;

(6) "Sandy beach area" includes publicly owned and privately owned sandy areas fronting on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest...[emphasis added.]

Discussion

The approved conversion of the outdoor storage shed to a catering kitchen facility is intended to serve the outdoor wedding events and other community events at MacCallum House. This fact suggests that the approved use of the lawn to place a tent and hold outdoor temporary wedding gatherings is intended to accommodate intermittent events occurring indefinitely into the future. Temporary events are defined in the town code as being of "limited duration." "Limited duration" is defined as a period of time that does not exceed a two-week period on a continual basis, or does not exceed a consecutive four-month period on an intermittent basis.

The applicants provided information on the types and numbers of events that are held on the MacCallum House lawn, in an August 23, 2005 letter to the Commission (exhibit 6). The MacCallum House holds private wedding events for its guests and community events for various entities in Mendocino, including fundraisers, Easter egg hunts, and music festivals. Since 2003, at least 50% (annually) of the events have been private guest events, and this percentage has gone up to 66% (in 2004) and to date in 2005 has been 50% although this percentage will rise because of several booked weddings in the fall (based on personal communication with the applicants, private events will comprise about 61% of the events at MacCallum house for the year 2005 [pers. comm. with applicants, August 23, 2005]). While in 2003 MacCallum House held only six events, this number rose sharply in 2004 with fifteen events (10 of which were weddings or 'private guest events') and in 2005 this number is expected to be eighteen (11 of which are weddings or 'private guest events'). Further, according to personal communication with the applicants, MacCallum House books wedding events several months in advance to fill

the popular wedding season in Mendocino, which take place in the spring and early summer and the fall (Noah Sheppard and Jed Ayers, per. com., 8/16/05).

Since the public hearing was opened on August 12, 2005, the applicant has provided additional information about previous wedding and other events held on the MacCallum House grounds over the last two years and scheduled events for 2005. Such events were held 6 times in 2003, 15 times in 2004, and it is anticipated they will be held 18 times in 2005. The Commission notes that the previous pattern of wedding and other events and the proposed schedule of future events do not reflect a random series of unanticipated temporary events. Instead, the weddings occur on a regular basis and provide a significant amount of business to the MacCallum House Inn that is both anticipated and planned for.

Because these outdoor events (1) are set up to be permanently served by the auxiliary kitchen, (2) are primarily for private weddings and serve an on- going commercial enterprise, and (3) exceed the definition of “limited duration” because the outdoor weddings have exceeded a consecutive four-month period on an intermittent basis, the Commission finds that the local government did not have a high degree of factual or legal support for its decision to exempt the outdoor events at MacCallum House as temporary events. Further, exempting from coastal development permitting requirements the outdoor wedding events at MacCallum House would set a precedent for the Town of Mendocino, as the issue of whether activities conform to the temporary use provisions of the Mendocino Town Zoning Code has not previously been considered on appeal by the Commission. Many such events could negatively affect coastal resources, such as public access or visual resources.

Therefore, for all of the above reasons, the Commission finds that the decision by the Coastal Permit Administrator to authorize the use of the MacCallum House lawn for outdoor wedding events raises a substantial issue of conformance with Mendocino Town Code Section 20.708.020.

Allegations Raising No Substantial Issue:

a. Accessory Uses/Structures and Public Services

Appellant’s contention no. 7 states that the approval of the kitchen as an “accessory structure” is inconsistent with the County LCP definition of accessory buildings, which states that they shall not include sleeping quarters or kitchens except as provided in the accessory use regulations of the Town Zoning Code.

LCP Policies

Mendocino Town Zoning Code Section 20.608.020(F) states:

“Accessory Building” means a detached subordinate structure, the use of which is incidental to the established primary use or main structure located on the same lot or

building site; i.e., private garage, storage shed, farm out buildings, etc. In no case shall such accessory structure dominate, in purpose, the principal lawful structure or use. This definition, by itself, is not intended to prohibit an accessory structure which is greater in size than the main structure. Accessory buildings shall not contain any sleeping quarters or kitchen facilities and are therefore not intended for human occupancy except as provided in Chapter 20.704 [emphasis added].

Mendocino Town Zoning Code Section 20.608.035(J) states:

"Principal Use(s)" means the primary use(s) for which land or a building is or may be intended, occupied, maintained, arranged or designed.

Section 20.704.010 of the Mendocino Town Zoning Code, Accessory Uses Encompassed by Principal Use, states:

(A) In addition to the principal uses expressly included in the zoning districts each use type shall be deemed to include accessory uses which are specifically identified by these Accessory Use Regulations; and such other accessory uses which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to, such principal uses. When provided by these regulations, it shall be the responsibility of the Director to determine if a proposed accessory use is necessarily and customarily associated with, and is appropriate, incidental, and subordinate to the principal use, based on the Director's evaluation of the resemblance of the proposed accessory use to those uses specifically identified as accessory to the principal uses and the relationship between the proposed accessory use and the principal use. Accessory uses shall not include manufacturing, processing or transportation of flammable, combustible, explosive, toxic or other hazardous materials. Such determinations which are made by the Director shall be subject to the administrative appeal procedure commencing at Chapter 20.728 [emphasis added.]

(B) An accessory structure may be constructed prior to the construction of a dwelling on the premises. An accessory structure shall not be used for temporary or permanent occupancy as a residence, without compliance with Section 20.708.025(B) (Construction Support). Accessory uses and structures shall be subject to the provisions of Chapter 20.720 (Coastal Development Permit Regulations). [emphasis added.]

Section 20.704.015 of the Mendocino Town Zoning Code, "Residential and Agricultural Use Types," States:

Subject to the restrictions and limitations of this Chapter, including the granting of a Coastal Development Permit where applicable, the following accessory buildings and uses shall be permitted in all zoning districts which allow a single family residence:

(A) Private Garages.

(B) Children's playhouses, patios, porches, gazebos, etc.

(C) Windmills.

(D) Shops (non-business purposes).

(E) Barns.

(F) Private swimming pools and hot tubs (not subject to setback requirements in the side or rear yards of any district).

(G) Accessory Living Unit. Not more than one (1) accessory living unit for each legal parcel.

(H) Day care center, family care home or school, for six (6) or less persons.

(I) Travel Trailer or Camper. The maintaining of one (1) travel trailer or camper in dead storage where it is not used for occupancy or business purposes and only when authorized pursuant to [Section 20.760.045](#). All stored travel trailers or campers in excess of one (1) shall be stored out of sight from a public right-of-way. The connection, for any continuous period exceeding forty-eight (48) hours, of any utility or service such as electrical, water, gas or sewage to the travel trailer or camper shall be prima facie evidence that it is being used for habitation or business purposes.

(J) Home Occupations. Subject to [Chapter 20.696](#).

(K) Household Pets. The keeping of dogs and cats and other household pets, but not including kennels.

(L) Accessory Parking. When authorized pursuant to [Section 20.760.045](#), the following may be allowed:

(1) The parking of one (1) large vehicle or construction equipment upon private property forty thousand (40,000) square feet or less in size.

(2) The parking of two (2) large vehicles or construction equipment upon private property greater than forty thousand (40,000) square feet but less than five (5) acres.

(3) The parking of three (3) large vehicles or construction equipment upon private property in excess of five (5) acres.

(4) Nothing in this subsection shall restrict the number of vehicles or construction equipment used by the property owner for their own agricultural or home use.

As used in this subsection "large vehicle" shall mean vehicles of three ton tare (unladen weight).

(M) Public Access. The offer to dedicate and acceptance of a dedication for an accessway except that the construction of a public access trail and, or construction of a staircase accessway on a bluff face (as determined by the Department of Planning and Building Services) will require a Coastal Development Use Permit.

(N) Other Necessary and Customary Uses. Accessory non-residential uses and non-residential structures, in addition to those identified above, which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to a principal use, as determined by the Director. (Ord. No. 3915 (part), adopted 1995)

Section 20.704.020, Civic and Commercial Use Types, of the Mendocino Town Code states:

(A) Public Access. The offer to dedicate, acceptance of a dedication or construction of a public access trail except that the construction of a staircase accessway on a bluff face (as determined by the Department of Planning and Building Services) will require a use permit.

(B) Accessory structures and uses necessarily and customarily associated with, and appropriate, incidental, and subordinate to the principal civic or commercial uses shall be permitted where these use types are permitted. [emphasis added.]

Section 20.664.010 of the Mendocino Town Code, Principal Permitted Uses for MC Districts, states:

(A) The following use types are permitted in the MC District:

(1) Residential Use Types

Family Residential: Single Family

Family Residential: Two Family

Family Residential: Multi-Family

(2) Civic Use Types

Administrative Services Government

Clinic Services

Cultural Exhibits and Library Services

Lodge, Fraternal and Civic Assembly

Minor Impact Utilities

Religious Assembly

(B) The following Use Types which do not exceed one thousand (1,000) square feet of gross floor area per parcel are permitted in the MC District.

(1) Commercial Use Types

*Administrative and Business Offices
Medical Services
Personal Services
Retail Sales: Limited*

(C) For the purposes of appeal to the Coastal Commission, the Principal Permitted Use for the Commercial District shall be Commercial Use Types.

Section. 20.664.015 of the Mendocino Town Code, Uses for MC Districts Subject to a Minor Use Permit, states:

The following use types may be permitted in the MC District upon issuance of a minor use permit:

(A) Civic Use Types

Day Care Facilities/Small Schools

(B) Commercial Use Types

*Business Equipment Sales and Services
Food and Beverage Preparation: Without Consumption
Food and Beverage Retail Sales
Repair Services, Consumer
Retail Sales: General (Ord. No. 3915 (part), adopted 1995)*

Section 20.664.020 of the Mendocino Town Zoning Code, Uses for MC Districts Subject to a Major Use Permit, states:

The following use types may be permitted in the MC District upon issuance of a major use permit.

(A) Civic Use Types

*Educational Facilities
Major Impact Services and Utilities*

(B) Commercial Use Types

*Agricultural Sales and Services
Animal Sales and Services: Household Pets
Animal Sales and Services: Veterinary (Small Animals)
Automotive and Equipment: Gasoline Sales
Automotive and Equipment: Repairs
Building Maintenance Services
Commercial Recreation: Indoor Sports and Recreation
Commercial Recreation: Indoor Entertainment
Communication Services
Construction Sales and Services
Custom Manufacturing*

Eating and Drinking Establishments
Financial Services [emphasis added.]

Sec. 20.684.010 of the Mendocino Town Zoning Code, Principal Permitted Uses for *Visitor Serving Facilities Combining Districts states:

*The following use types are permitted in the * District:*

(A) Residential Use Types

Family Residential: Single Family (Ord. No. 3915 (part), adopted 1995)

Sec. 20.684.015 Conditional Uses for * Districts.

*The following use types may be permitted in the * District upon issuance of a use permit:*

(A) Residential Use Types

All Residential Use Types specified in the base zone.

(B) Visitor Accommodation Use Types

Hostel

Hotel

Inn

Motel

Student/Instructor Temporary Housing (Ord. No. 3915 (part), adopted 1995)[emphasis added.]

Sec. 20.684.020 Development Regulations for * Districts.

*Within the * District, site development regulations of the base zone shall apply, including the provisions of Section 20.660.075(A) and (B) when combined with the MMU District*

Discussion

The appellant notes that Mendocino Town Zoning Code Section 20.608.020(F) indicates that accessory buildings shall not contain sleeping quarters or kitchen facilities and are therefore not intended for human occupancy, except as provided in Chapter 20.704. The appellant contends that the approved project is inconsistent with Section 20.608.020(F) because it authorizes a kitchen in an accessory structure. However, Section 20.608.020(F) does not completely prohibit kitchen facilities within accessory buildings. Section 20.608.020(F) indicates kitchens may be allowed in accessory structures if they are provided for under Chapter 20.704 of the Code, which is the chapter entitled “Accessory Use Regulations.”

The approved conversion of the storage shed to a kitchen was approved by the County as an “accessory use,” as per Mendocino Town Zoning Code Section 20.704.020(B). This section states that in addition to the principal uses on a property other accessory uses that are associated

with and incidental to the principal uses shall be permitted with a coastal development permit; and for those developments located in commercial zones, accessory structures and uses necessarily and customarily associated with the principal civic or commercial uses shall be permitted. Principal uses are defined in the Town zoning code as the primary use(s) for which land or a building is or may be intended, occupied, maintained, arranged or designed. In the case of MacCallum House, the property and grounds have been used as an inn and restaurant since 1976. This is a legal non-conforming use as per the Mendocino LCP, and the property is located in a *Visitor Serving Facilities Combining Zone. The use of the storage shed as an auxiliary kitchen is accessory, and incidental to, the primary inn and restaurant use of the property, consistent with the accessory use provisions in the Town Code (Section 20.704.020(B)) for developments located in commercial zones. Therefore, as a kitchen is accessory to the principal use of the property, installation of a kitchen in the accessory structure is provided for under Section 20.704.020(B).

For the above reasons, the Commission finds that the local government had a high degree of legal and factual support for its decision to approve the conversion of the storage shed to an auxiliary kitchen. Therefore, the Commission finds that the appeal raises no substantial issue with regards to conformance with the requirements of the accessory structure provisions of Section 20.608.020(F) of the Mendocino Town Zoning Code.

Conclusion

All of the various foregoing contentions raised by the appellants have been evaluated against the claim that they raise a substantial issue in regard to conformance of the local approval with the certified LCP. The Commission finds that the development proposed by the applicant in the coastal development permit application and approved by the County raises a substantial issue of conformance with the certified LCP, with respect to the contention raised concerning inconsistency of the approved development with the temporary events policies of Mendocino Town Zoning Code.

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Appeal
4. Notice of Final Local Action
5. Project Plan
6. Applicant's Correspondence
7. Other Correspondence